

Congress of the United States
House of Representatives

Washington, DC 20515
May 7, 2013

Rex W. Tillerson
Chairman and Chief Executive Officer
ExxonMobil
5959 Las Colinas Boulevard
Irving, Texas 75039-2298

Dear Mr. Tillerson:

I write to seek clarification regarding troubling and apparently conflicting information about the March 29th oil spill in Mayflower, Arkansas provided by ExxonMobil to the Environmental Protection Agency (EPA), to Congressional offices, and to members of the public. Firstly, it appears that ExxonMobil told Congressional offices and members of the public that the oil spilled during this accident was not diluted bitumen but rather was conventional crude oil, while information ExxonMobil provided to the EPA seems to indicate otherwise. Understanding the type of oil that was spilled is essential to ensuring that the clean-up response is conducted appropriately and that the public is fully informed of the dangers. Secondly, after becoming aware of the pipeline rupture, it took ExxonMobil much longer to shut down the pipeline than the company had planned for under a “worst case” spill scenario. Thirdly, inaccurate or misleading information put forward by your company about the oil spilled and the funds being used to clean it up raise additional questions about whether ExxonMobil plans to pay the full cost of clean-up and whether the spilled oil was exempted from paying the 8-cent-per-barrel tax to fund the Oil Spill Liability Trust Fund, which is currently being drawn down to fund clean-up efforts.

On the afternoon of March 29, 2013, a 22-foot segment of ExxonMobil’s Pegasus pipeline ruptured in Mayflower, Arkansas, spilling up to 7,000 barrels of oil in and around a residential community, according to the EPA. The 65-year old pipeline had previously received civil penalties for significant but unrelated violations of pipeline safety standards in 2002 and again in 2010.^{1 2} The spill led to the evacuation of at least 22 homes, has required more than 100,000 man-hours of cleanup efforts, and will require years of work and many millions of dollars to fully remediate the area.^{3 4} Many in the area remain concerned about continued high levels of toxic chemicals in the air and the prospect of contamination of nearby fresh water resources.^{5 6}

¹ http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/220025006_final_order_09052002.pdf

² http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/320105014_Final_Order_12202011.pdf

³ <http://www.foxbusiness.com/news/2013/04/17/exxon-offers-to-buy-homes-near-arkansas-oil-spill-site/>

⁴ http://www.exxonmobil.com/Corporate/Files/news_release_ar_042313.pdf

⁵ <http://www.gcmmonitor.org/article.php?id=1672> and <http://www.katv.com/story/22048388/tests-reveal-tar-sands-in-lake-conway-exxon-denies>

⁶ <http://rt.com/usa/exxon-study-cancer-spill-596/>

Misleading Claims Regarding the Type of Oil

In the wake of the Arkansas spill, ExxonMobil posted a webpage entitled, “Five lies they’re telling you about the Mayflower pipeline spill” with the apparent purpose of making clear that the company believes that the oil spilled in Mayflower is conventionally-produced heavy oil, not diluted bitumen. The page reads, “The second inaccuracy here is that oil spilled in Mayflower is diluted bitumen from the Canadian oil sands. The crude that spilled is Wabasca heavy oil and it’s from Alberta near the area where there is oil sands production. It’s produced by conventional production methods...”⁷ These materials were also delivered to my staff by an ExxonMobil employee.

However, ExxonMobil acknowledged in recent filings with the EPA that this may not be the case. In an April 8th letter, the EPA asked ExxonMobil directly, “Can the oil accurately be described as tar sand oil, or a type of diluted bitumen (dilbit)?” ExxonMobil’s April 10th response makes clear that Canadian authorities do in fact regard the spilled oil as bitumen:

The terms “tar sand oil” and “diluted bitumen (dilbit)” are subject to colloquial uses and varying understandings. ExxonMobil considers the oil released on March 29, 2013 to be conventionally produced Wabasca Heavy crude. ExxonMobil was advised today by the Government of Alberta’s Energy Resources Conservation Board that Canadian producers report their production of Wabasca Heavy as bitumen. As referenced in Response #1 above, the two Canadian producers add condensate as a diluent to the Wabasca Heavy crude in order to meet pipeline specifications.

I find it troubling that ExxonMobil would state in its response to EPA that tar sands oil and diluted bitumen are “subject to colloquial uses and varying understandings,” yet the company appears to make different assertions on its public website, stating definitively that it is inaccurate to characterize oil spilled from the Mayflower pipeline as diluted bitumen or tar sands oil. This ExxonMobil web posting remained live and unedited on the company’s website at as of the date of this letter.

The Tar Sands Tax Loophole and Use of the Oil Spill Liability Trust Fund

ExxonMobil’s description of the oil spilled in Mayflower apparently corresponds with the Internal Revenue Service’s understanding of what constitutes tar sands oil. In their Technical Advice Memorandum (TAM) 2011200199, the Internal Revenue Service (IRS) described the properties of tar sands oil and the conditions under which a specific taxpayer’s importation of tar sands oil was exempt from the excise tax that funds the Oil Spill Liability Trust Fund. The TAM, in part, reads, “...bitumen extracted from tar sands and blended with a diluent or other liquid that enables the bitumen to be transported through a pipeline.” ExxonMobil’s submission of a Material Safety Data Sheet to the EPA describes the oil spilled in Mayflower as “Christina Lake

⁶ <http://rt.com/usa/exxon-study-cancer-spill-596/>

⁷ <http://www.exxonmobilperspectives.com/2013/04/05/five-lies-theyre-telling-you-about-the-mayflower-pipeline-spill/>

Dil-bit Blend”⁸ and “Cold Lake Blend.” ExxonMobil’s own website describes the Cold Lake Blend as “an asphaltic heavy crude blend of bitumen and condensate.”⁹

Congress created the Oil Spill Liability Trust Fund in 1986 to make resources available to respond to and clean up oil spills and to pay claims to those who have incurred removal costs or suffered damages¹⁰. The Trust Fund is replenished through an excise tax that is imposed on U.S. refiners receiving crude oil and on persons entering petroleum products, including crude oil, into the United States for consumption, use, or warehousing. The excise tax is currently 8 cents per barrel.¹¹ However, as mentioned above, the IRS determined that tar sands imported into the United States are not subject to the excise tax on petroleum imposed by § 4611 of the Internal Revenue Code (IRC), relating to payments to the Oil Spill Liability Trust Fund. While the TAM may only be relied upon by the taxpayer for whom the TAM was issued, other similarly situated taxpayers may find the TAM instructive for purposes of avoiding the excise tax. So while funds are currently being drawn down from the Oil Spill Liability Trust Fund to pay for spill clean-up in Mayflower, it appears that this oil may have been imported without paying into the Fund.

In order to respond most effectively to the spill, it is critical to have a clear understanding of the make-up of the spilled oil. The 2010 spill of diluted bitumen in the Kalamazoo River in Michigan proved to be more difficult and expensive to clean up than lighter crude oil, according to EPA officials responsible for overseeing the government’s response.¹² Because of its unique properties, tar sands oil had to be cleaned up at every level of the river—the top, the middle, and at the bottom, where it sunk into the sediment. And in fact, the clean-up continues, with EPA just last month requiring that more dredging be performed to remove the sticky tar sands oil from the affected area. For these reasons, it is important that those responsible for oil spills be forthcoming and accurate when making representations regarding the oil they spilled.

Since the oil industry is increasingly transporting diluted bitumen through pipelines in America and advocating building additional pipelines that will carry it, it is important to know what technology the industry is using to deal with spills. During BP’s Deepwater Horizon spill, I was concerned that the sector’s spill response technology had not improved since the Exxon Valdez spill. As our pipelines are increasingly carrying oil products that may be more challenging to clean up if they are spilled, it is imperative that the oil industry use the best available spill response technology and share that information with industry and all levels of government so that spill response and clean up can be timely and effective.

I am also concerned about ExxonMobil’s statements regarding payment of clean-up costs. In the same web posting entitled “Five lies they’re telling you about the Mayflower pipeline spill,” on ExxonMobil’s website, it says “Let me start by saying ExxonMobil will pay for the cleanup. Period. Full-stop. ...And again, we’re not using the Oil Liability Trust Fund to

⁸ The commonly used shorthand term for diluted bitumen is “dilbit.”

⁹ http://www.exxonmobil.com/crudeoil/about_crudes_cold.aspx

¹⁰ The US Coast Guard’s National Pollution Fund Center website, available at: http://www.uscg.mil/npfc/About_NPFC/osltf.asp

¹¹ Internal Revenue Service, available at <http://www.irs.gov/publications/p510/ch03.html>.

¹² http://democrats.naturalresources.house.gov/sites/democrats.naturalresources.house.gov/files/2012-07-31_IRS_Tarsands_Report_0.pdf

pay for the cleanup. ExxonMobil is paying for the cleanup.” However, the Oil Spill Liability Trust Fund *is* currently being drawn down to help fund clean-up efforts in Mayflower. It is very important that ExxonMobil reimburse the Fund for these costs in a timely fashion. According to the Government Accountability Office, the Trust Fund is currently at risk of running out of money because of expensive cleanup efforts resulting from major spills such as BP’s Deepwater Horizon spill and Enbridge’s Kalamazoo spill of tar sands oil.¹³

Contradictory Timeline of Events and Slow Shut Down of the Pipeline

ExxonMobil has laid out an inconsistent timeline of events of March 29th that, at best, casts doubt on whether the ruptured pipeline was shut down as quickly as it could have been and could demonstrate reckless behavior if the company knew of the pipeline rupture yet failed to alert local authorities and residents. Multiple calls from ExxonMobil employees to the National Response Center state that the spill was detected at 1:15 pm local time.^{14 15} Yet ExxonMobil’s website states “a low pressure alarm was received at ExxonMobil Pipeline Company’s Operations Control Center in Houston” much later, at approximately 2:37 pm. In either case, residents and officials in Mayflower apparently were *not* alerted of the spill by ExxonMobil, despite an ExxonMobil employee telling the National Response Center that the company “did notify 911”.¹⁶ It wasn’t until a Mayflower resident called police at 2:44 pm and told dispatchers about oil spilling all over the neighborhood that first responders were activated.¹⁷ Police subsequently called ExxonMobil to notify the company of the spill at 3:19 pm.¹⁸ ExxonMobil representatives from the Conway field office, which is 22 miles from Mayflower, did not arrive on the scene until 3:43 pm and it is unclear whether they were even aware of the spill before they were notified by police.¹⁹

It is also unclear how long it took ExxonMobil to shut down the pipeline after the spill began. The company’s website claims that it took 16 to 17.5 minutes to fully shut down the pipeline after the low pressure alarm was received at 2:37 pm.²⁰ But if the spill did in fact begin at 1:15 pm, nearly an hour and a half before shut down procedures began—which is what ExxonMobil employees told the National Response Center—then it’s possible that the pipeline wasn’t shut down for more than 98 minutes after the rupture was detected. Either way, it took too long to shut down the pipeline. In its “Emergency Response Plan,” ExxonMobil assumes in its

¹³ GAO-10-795T, “Oil Spills: Costs of Major Spills May Impact Viability of Oil Spill Liability Trust Fund,” June 16, 2010, Available at <http://www.gao.gov/new.items/d10795t.pdf>.

¹⁴ http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/ExxonMobil_NRC_Reports_01.pdf

¹⁵ http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/ExxonMobil_NRC_Reports_03.pdf

¹⁶ Recording of phone call between ExxonMobil employee and National Response Center regarding Incident Report # 1042466

¹⁷ <http://www.documentcloud.org/documents/693772-faulknercountyreportexxonoilspillinsidedclimateneews.html#document/p2>

¹⁸ Id.

¹⁹ Id.

²⁰ http://www.exxonmobilperspectives.com/2013/04/10/14-questions-answered/?utm_source=subscription&utm_medium=email&utm_campaign

“worse case” scenario that it would take just nine minutes to shut down the pipeline in the event of a spill.²¹

To remove any doubt regarding the nature of the oil spilled on March 29th, ExxonMobil’s actions in responding to it, and to understand the company’s plans for paying for cleanup, I would like to obtain answers to the following questions.

1. Does the oil spilled in Mayflower, Arkansas contain bitumen? Please fully justify your response.
2. You stated in your April 10th letter to the EPA that “the two Canadian producers from whom the Wabasca Heavy crude is purchased add condensate to the Wabasca Heavy crude as diluent to meet pipeline specifications.” Please provide the name of the condensate(s) or diluent(s) utilized.
3. Does the spilled oil meet the definition for what the IRS has, in the past, allowed to be exempted from paying into the Oil Spill Liability Trust Fund under TAM 201120019? Please fully explain your response.
4. For each of the past five years, please provide me with a) the total volumes of each type of oil ExxonMobil imported into the United States from Canada and b) for each year and each type of oil, whether ExxonMobil made payments into the Oil Spill Liability Trust Fund.
5. What two companies produced the oil that spilled in Mayflower, Arkansas? Are those producers wrong in reporting their production of Wabasca Heavy crude as bitumen to the Government of Alberta’s Energy Resources Conservation Board? If so, please explain in technical terms how you believe the producers are mischaracterizing the oil.
6. Is the Government of Alberta’s Energy Resources Conservation Board wrong in reporting Wabasca Heavy as bitumen? If so, please explain how and why you believe that to be the case.
7. Did the two producers of the Wabasca Heavy crude report information to ExxonMobil regarding the makeup of Wabasca Heavy crude that contradicts what they reported to the Government of Alberta’s Energy Resources Conservation Board? If so, please include in your response copies of any documents that include this information.
8. Did either of the two Canadian producers of the Wabasca Heavy crude ever submit documentation to ExxonMobil that stated that the blend sold for transport in ExxonMobil’s pipeline included bitumen? Have you consulted with the two producers of the Wabasca Heavy crude to clarify whether the spilled oil is subject to the excise tax?
9. Does ExxonMobil believe that the oil spilled in Mayflower, Arkansas was either subject to the excise tax imposed by IRC § 4611 when it was imported into the United States or would have been subject to the tax if it had been delivered to a U.S. refinery? Was there a tax payment made pursuant to the excise tax imposed by IRC § 4611 in relation to the oil that was imported into the United States and ultimately spilled in Mayflower, Arkansas?
10. Are the methods, technologies, and processes for containing and cleaning up conventional crude oil spills identical to those used for containing and cleaning up diluted bitumen?

11. In calls placed to the U.S. Coast Guard on the evening of March 29 to report the spill, ExxonMobil employees characterized the material flowing from the ruptured pipeline as “crude oil.” ExxonMobil’s Spill Response Plan similarly characterizes the oil flowing through the pipeline as “crude oil.”²² For first responders to an oil spill—be they ExxonMobil employees and contractors or federal, state, or local employees—would knowing whether spilled oil is diluted bitumen rather than conventional oil help to more effectively contain and clean-up the spill and protect public health and safety? Why or why not?
12. On its website, ExxonMobil states that it received an alarm regarding low pressure on the pipeline at its Operations Control Center in Houston at 2:37 pm. Was this the first information the company received about a possible problem with the Pegasus pipeline? What were two different ExxonMobil employees referencing when they separately called the National Response Center and reported that the incident was discovered at 1:15 pm?
13. At what time did ExxonMobil discover the oil leak on March 29th? At what time did ExxonMobil commence shutdown of the pipeline? Were ExxonMobil employees in the Conway field office near Mayflower aware of the spill when contacted by police at 3:19pm? Why were local law enforcement officials contacting ExxonMobil about the spill rather than vice-versa if ExxonMobil had detected the leak much earlier?
14. ExxonMobil’s “Emergency Response Plan” outlines a “Worst Case Discharge” scenario that includes a *maximum* spill detection time and shutdown time of 3 and 9 minutes, respectively. Yet, depending on which of ExxonMobil’s timeline of events we apply, it took at least 16 minutes—possibly much longer—to shut down the pipeline once the spill was detected. How much time elapsed between when the spill began and when the Operations Control Center received a low pressure alarm? Why did it take so much longer to shut down the pipeline than the time assumed under a worst case spill scenario?
15. Did ExxonMobil alert law enforcement after becoming aware of the oil spill, as stated in the call to the National Response Center at 5:06 pm on March 29th? Please detail what time was that call made, who it was directed to, and who made the call.
16. Will ExxonMobil commit to fully reimbursing the Oil Spill Liability Trust Fund for all expenditures related to the spill in Mayflower, Arkansas?
17. Is the spill impacting wetland and water sources in the area, especially those surrounding Lake Conway?
18. What techniques and technologies are ExxonMobil using to clean up land and water sources impacted by the spill? Are these technologies the best available for this type of cleanup?
19. News reports suggest that an alternative technology OPFLEX Technology might provide better results than traditional spill technology.²³ Have you evaluated this or other new technologies for cleaning up diluted bitumen?

Thank you for your attention to this important matter. Please direct questions and correspondences to my staff at 202-225-6065 or by email at jonathan.phillips@mail.house.gov,

²²

http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/corsicana_zone_plan_12_2009_redact.pdf

²³ http://arkansasmatters.com/fulltext?nxd_id=651222

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ryan.holden@mail.house.gov, and morgan.gray@mail.house.gov. As the questions relate to important events unfolding in real-time, I request that you submit responses to these questions by no later the close of business on May 17, 2013.

Sincerely,


Edward J. Markey